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STATE OF MICHIGAN
COURT OF APPEALS

In re H. STATON, Minor.

UNPUBLISHED
November 21, 2019

No. 349355
Macomb Circuit Court
Family Division
LC No. 2018-000074-NA

Before: JANSEN, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to her child, HS, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to parent). We affirm.

I. BACKGROUND

In March 2018, the trial court authorized a petition for HS's removal from respondent's care. A complaint was made to Child Protective Services (CPS) alleging physical neglect, improper supervision, threatened harm, and ongoing substance abuse in respondent's home. In addition, it was reported that respondent often left HS unattended and that there were dangerous, loaded weapons as well as knives hidden in the furniture at respondent's home. When CPS and the police arrived at respondent's home to investigate, respondent hid in a back bedroom with HS and refused to come out. After several hours, the police took custody of HS, who had open wounds from a severe diaper rash for which respondent had not sought medical attention. The trial court took temporary jurisdiction over HS and ordered respondent to comply with a parent-agency agreement.

Over a year later, the trial court authorized a petition to terminate respondent's parental rights. In May 2019, following a hearing,¹ the trial court terminated respondent's parental rights.

Respondent now appeals as of right.

II. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred when it found statutory grounds to terminate her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent further argues petitioner failed to provide her with reasonable services to aid reunification. We disagree.

We review the trial court's findings regarding statutory grounds for clear error. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* (quotation marks omitted). In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *Id.*

A. MCL 712A.19b(3)(c)(i)

Here, the trial court did not err by terminating respondent's parental rights to HS under MCL 712A.19b(3)(c)(i). A trial court may terminate parental rights if 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(i).

First, the trial court entered the initial dispositional order on April 30, 2018. Therefore, more than 182 days had passed when, on May 21, 2019, the trial court found by clear and convincing evidence that the conditions leading to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. MCL 712A.19b(3)(c)(i).

Second, evidence demonstrated the conditions leading to the adjudication continued to exist. The conditions at adjudication included allegations of substance abuse, particularly respondent's abuse of heroin; domestic violence; physical neglect, including leaving HS unattended while respondent was intoxicated; and multiple felony warrants for respondent's arrest. Respondent also failed to provide a suitable home for HS. There was evidence that members of respondent's household used drugs and were intoxicated in HS's presence. The home was unsafe because of loaded weapons, knives, and other dangerous weapons hidden in the

¹ Respondent failed to appear at the hearing. The parties agreed that reasonable efforts were made to secure her presence and that service was proper; however, her whereabouts were unknown.

furniture. When HS was removed from respondent's care, he had open wounds from a severe diaper rash for which respondent had not sought medical attention.

At the time of termination, respondent had not submitted to any drug tests despite court-ordered drug screens in light of her history of heroin abuse. Respondent also failed to complete a substance abuse assessment. Moreover, respondent never obtained suitable housing. For the most part, respondent lived in her parents' home, which was not suitable for HS because it was the home from which he was initially removed. And when the trial court terminated respondent's parental rights, her whereabouts and living situation had been unknown for five months and remained unknown. Furthermore, at the time of termination, respondent had not completed a parenting class and failed to visit HS for five months.

Because respondent had made no effort to address and rectify any of the issues that led to HS's adjudication, the trial court did not clearly err in terminating her parental rights under MCL 712A.19b(3)(c)(i).

B. REASONABLE EFFORTS

Respondent also argues the trial court erred in finding sufficient grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) because petitioner did not make reasonable efforts to assist her in addressing the issues that led to the adjudication. We disagree.

In general, "the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009).

Here, petitioner made reasonable efforts to rectify the conditions causing HS's removal. *Fried*, 266 Mich App at 542. Petitioner twice referred respondent for parenting classes, but she never attended. Petitioner also referred respondent for a psychological evaluation in November 2018, but she failed to complete any of the recommended services stemming from that evaluation. Petitioner further arranged for respondent to submit to random drug screens, but she never complied. Petitioner also referred respondent for a substance abuse assessment, but she never attended. Petitioner also made three separate referrals for a care assessment, but respondent never followed through. Importantly, petitioner arranged for respondent to have parenting time with HS. Respondent's attendance was sporadic until mid-December 2018, when she just stopped visiting HS. Although respondent did not receive a domestic violence assessment referral because petitioner had to wait until she was out of jail, she was offered and referred to many other services and failed to comply. The caseworker testified that respondent would not be able to comply with her parent-agency agreement even if given additional time to do so because she had demonstrated "[c]omplete non-compliance" with the parent-agency agreement.

The evidence establishes that petitioner and respondent entered into a parent-agency agreement. Thereafter, petitioner offered respondent numerous opportunities to engage in

multiple services. On this record, we conclude that petitioner complied with its duty to make reasonable efforts to reunify respondent and HS. *Fried*, 266 Mich App at 542.

Because we have determined that the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), we need not address the remaining grounds. See *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016) (stating that the trial court only needs to find that one statutory ground has been established to terminate a respondent's parental rights).²

III. BEST INTERESTS

Respondent further argues the trial court erred when it determined that termination of her parental rights was in HS's best interests. We disagree.

"[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Moss*, 301 Mich App at 90. We review for clear error the trial court's ruling that termination is in the child's best interest. *Hudson*, 294 Mich App at 264. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Moss*, 301 Mich App at 80 (citation and quotation marks omitted).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App

² We do however note that MCL 712A.19b(3)(g) was amended effective June 12, 2018. See 2018 PA 58. The amended version of the statute added "although, in the trial court's discretion, financially able to do so" in place of the prior language, which stated "without regard to intent." See 2018 PA 58. Both the supplemental petition that sought termination of respondent's parental rights and the trial court relied on the pre-amendment version of the statute after the amended version was effective. Consequently, the trial court did not explicitly make any findings of fact regarding respondent's finances other than noting that she failed to provide documentation of legal income. Because the trial court never addressed the applicable statutory language, it did not find that MCL 712A.19b(3)(g), as amended, was established by clear and convincing evidence. Thus, it erred in terminating respondent's parental rights under the version of MCL 712A.19b(3)(g) that was no longer in effect. But because at least one statutory ground was established by clear and convincing evidence, this error was harmless.

701, 714; 846 NW2d 61 (2014). When the trial court considers a child's best interests, the focus must be on the child and not the parent. *Moss*, 301 Mich App at 87-88.

The trial court did not clearly err when it found that it was in HS's best interest to terminate respondent's parental rights. Respondent did not fully comply with any of the court-ordered services. *White*, 303 Mich App at 714. Respondent did not address her substance-abuse issues, nor did she obtain suitable housing or a legal source of income.

There is also no indication HS had a bond with respondent. *Olive/Metts*, 297 Mich App at 41-42. Although respondent was appropriate during the parenting visits that she attended, she failed to attend any visits in the five months prior to the termination of her rights. She also failed to complete parenting classes.

During the 14 months that HS lived with his foster family, foster care workers continuously reported that HS was doing well. *Moss*, 301 Mich App at 87-88. HS's foster family was willing to plan long-term for HS and hoped to adopt him. *Id.* HS has spent the majority of his life in foster care and had an opportunity to develop permanency and stability with his foster family. *Id.*

Respondent argues the court did not consider a guardianship for HS even though HS's three siblings were placed in a guardianship. This assertion is misplaced. The trial court specifically addressed this issue and found that, after exploration, guardianship was not a viable option here because there was no family member to serve as HS's guardian. Moreover, there was no indication that respondent could succeed with a guardianship plan due to her lack of compliance with her parent-agency agreement. *White*, 303 Mich App at 714.

Respondent's conduct in failing to comply with services, make any progress in her treatment plan, or maintain any relationship with HS for five months prior to the termination of her parental rights left HS without the permanency, finality, and stability he needs. *Olive/Metts*, 297 Mich App at 42. HS's foster family, on the other hand, could provide HS with all three. *Moss*, 301 Mich App at 87-88.

Given the evidence presented, the trial court properly determined that there were statutory grounds for termination of respondent's parental rights and that termination was in HS's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark T. Boonstra
/s/ Anica Letica